

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

October 26, 2001

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

OAHU

Report to the Board of Land and Natural Resources on the
Public Informational Meeting Held on the Kaneohe Bay Piers
Amnesty Program

BACKGROUND:

On August 24, 2001, under agenda Item D-29, the Board of Land and Natural Resources (Board) approved the issuance of 151 leases for private, residential, non-commercial piers to various applicants under the Kaneohe Bay Piers Amnesty Program. The Board amended staff's recommendation by:

- 1) Requiring a performance bond for all leases, whether by one-time payment or annual lease rent, at \$20 per square foot;
- 2) Making the authorization to amend all prior Board actions from April 12, 2001 on for which Board approved the issuance of a pier lease in Kaneohe Bay subject to approval by the Chairperson and the Department of the Attorney General;
- 3) Instructing staff to hold an informational meeting for all applicants to go over the implementation process;
- 4) Requiring staff to report on the results of the informational meeting; and
- 5) Requiring staff to report back to the Board on the status and process for non-residential piers.

This submittal fulfills items 4) and 5).

REPORT ON INFORMATIONAL MEETING:

On Thursday, September 27, 2001, staff conducted a public informational meeting on the Kaneohe Bay Piers Amnesty Program. This meeting was held at the Kaneohe Community and Senior Center. Participants in the Amnesty Program were notified via the letters notifying them of the August 24th Board results. Also, notification was posted onto the Land Division's Kaneohe Bay Piers Amnesty Program website.

The meeting was well attended with somewhere in the neighborhood of 50 people. Staff provided the attached handout (Exhibit A) which included the agenda, process flowcharts and a sheet of paper for participants to write down questions or concerns. Staff's presentation included:

- History of the Kaneohe Bay Piers Amnesty Program, including identifying all of the actions taken by the Board

- Explanation of the two alternatives to determine lease rent (i.e., approved methodology and independent appraiser) - approved methodology was reviewed
- Report on the Department of the Attorney General's opinion that the Board does not have statutory authority to provide rental credits for past payments already made under existing revocable permits and that such waiving of lease payments may be a breach of ceded land trust obligations
- Explanation of the two alternatives to pay lease rent (i.e., one-time payment and annual lease rent) - paying annually will require rental reopenings
- Review of the process flowcharts, including the lease disposition and encroachment processes
- Review of items the applicants will be responsible for
- Information on how to find out more about the program (visit website, phone numbers to call)

Staff's presentation was followed by public testimony or questions. Comments were grouped into the following main issue areas (+ indicates approximate number of people who spoke on the issue):

Rent:

- 1) Rent is okay++
- 2) Rent never went to a hearing; not aware of Board meeting++
- 3) Comparison to other states indicates this is not fair amount+++
- 4) Use of commercial rates (50%)++
- 5) Should use fixed/flat amount for everyone; not tax assessment+

Bond:

- 1) Bond is not fair; bond should not be required; makes entire deal unworkable++++
- 2) If bond is imposed, will tear pier down (cannot afford)+++
- 3) Unclear what the purpose of the bond is+
- 4) Fear of piers not being maintained are not realistic; since part of residence, people will take care of them; State should not worry about removal of pier++
- 5) Should use rent amount to cover bond+

Insurance:

- 1) Insurance should not be required+
- 2) Questioned whether State has ever been involved in any lawsuit regarding a residential pier+

Deadline:

- 1) July 2002 deadline is too short; need more time to decide whether to participate++
- 2) Questioned why the July 2002 deadline when the Act sunsets in 2005+
- 3) Encroachments will take a long time to resolve+

- 4) The law sunsets in 2005; if we can put this off for a few years, it goes back to the way it was before+

Miscellaneous:

- 1) Country is in recession; people can't afford this right now; not the right time+
- 2) State will end up paying for removal because people won't be able to afford+
- 3) Want Land Board at community meetings, not staff who can't make decisions+
- 4) Want to hire an attorney to sue the State+++++

Based on a show of hands at the conclusion of the meeting, the two major concerns were the bond and the rent formula. Some were also concerned with the insurance requirement and the deadline. Most wanted to see the Board at the community meetings.

Attached as Exhibits B, C and D are written concerns received about the Kaneohe Bay Piers Amnesty Program.

STAFF'S RESPONSE TO CONCERNS:

Rather than deal with all of the individual issues raised, staff will respond to the two major issues: rent and performance bond.

RENT:

Although it was difficult for staff to wade through the emotional and generalized complaints of the pier owners, staff believes there are two primary complaints regarding the rent. First, the 50% figure used in the formula is too high because commercial examples were inappropriately used. Second, the formula is not in line with mainland states.

The 50% figure in the formula represents the value of the submerged land as a percentage of the value of the abutting fast land. In our submittal of February 23, 2001, staff explained that the 50% figure has historically been used by the Land Division in appraising residential pier rents and is used in an identical formula by the Department of Transportation, Harbors Division when leasing submerged lands for commercial purposes and by the Division of Boating and Ocean Recreation when leasing submerged lands for commercial and recreational boating activities.

Staff provides the following example rents calculated for specific parcels.

	Pier	2000-2001				
	Area	Land Value	Lot Area	Value	Consideration	
Average	328	\$ 366,164	12,502	18.32	\$ 5,129	
Median	258	\$ 334,500	8,944	18.68	\$ 4,205	
Highest Land Val	330	\$ 181,700	2,213	41.05	\$11,981	
Lowest Land Val	150	\$1,061,600	62,315	8.52	\$ 1,130	
Biggest Pier	1300	\$ 599,400	22,703	13.20	\$15,176	
Smallest Pier	32	\$ 380,500	12,606	15.09	\$ 427	

The research of mainland states' pier rents, conducted by a legislative analyst at the request of Representative Colleen Meyer (who is a pier owner), is attached to the Protect Our Shoreline Ohana letter dated September 27, 2001 (Exhibit C).

The 50% figure and the comparison to mainland states need to be understood within a certain context - that of the Public Land Trust (not to be confused with the Public Trust Doctrine). Staff contacted Washington State who, according to the legislative analyst's research, does not charge any fees or rents for submerged lands.

When Washington was admitted to the Union in 1889, Congress granted 3 million acres of forests, prairies and grasslands as "school land" grants. These lands are held in trust and must be managed primarily to generate income for the state's Common Schools (kindergarten through 12th grade), colleges and universities, charitable institutions, prisons, improvements to public buildings at the Capitol, local services and the state general fund. In addition, with statehood, Washington became the owner of about 2.6 million acres of aquatic lands, including tidelands, shorelands and the beds of Washington's marine waters. These lands are managed as a "public trust" for all the people of Washington.

When Hawaii became a state in 1959, the federal government transferred over one million acres of land ceded to the federal government in 1898. The Admission Act provided that these lands, former Crown and Government lands ceded to the United States at annexation, and the proceeds from the sale of other disposition of any such lands were to be held by the state as a public trust to be used for one or more of five purposes (support of public schools and other public educational institutions, betterment of the conditions of native Hawaiians, development of farm and home ownership, making of public improvements and public use). The Attorney General has opined that Hawaii's submerged lands are classified as part of this public land trust.

Without going into a lengthy dissertation, staff would only like to point out that there is an inherent difference in Hawaii's submerged lands and how they are managed versus the mainland states'. Hawaii's submerged lands are part of the public land trust which must be managed for one or more of the five purposes. The aquatic lands in Washington are not part of their school land trust and is guided by different principles, primarily encouraging widespread recreational use by the public. In fact, Washington State staff mentioned that even commercial marinas are charged below appraised values in Washington to meet this goal.

Regarding the comparison to commercial uses of submerged land, staff notes that the commercial use would be accounted for in the fast land value.

Finally, in reviewing the example rent amounts, staff notes that the one-time consideration, on average, breaks down to about \$93 per year or \$7.70 per month. Staff believes this is reasonable and not overly burdensome, particularly since the large majority of these piers have already existed (illegally) for many years

without any compensation to the trust.

PERFORMANCE BOND:

On the issuance of the pier leases, staff recommended that a performance bond be required only where an applicant chooses to pay annually. This recommendation was based on the belief that: 1) there were minimal performance issues where a one-time payment was made and 2) the Surrender provision language was sufficient to enforce removal upon the termination of the lease.

At the meeting of August 24, 2001, the Board amended this recommendation to require a performance bond for all lessees in the amount of \$20 per square foot. This amendment was based on ensuring the State has solid recourse to enforce removal of the pier upon termination of the lease. The amount was based on staff's research that removal would cost approximately \$20 per square foot.

The following are example performance bond amounts using the same properties used above for the consideration examples:

	<u>Pier Area</u>	<u>Consideration</u>	<u>Perf. Bond Amt.</u>
Average	328	\$ 5,129	\$ 6,560
Median	258	\$ 4,205	\$ 5,160
Highest Land Val	330	\$11,981	\$ 6,600
Lowest Land Val	150	\$ 1,130	\$ 3,000
Biggest Pier	1300	\$15,176	\$26,000
Smallest Pier	32	\$ 427	\$ 640

Staff researched other alternatives to charging the \$20 per square foot that would still provide for enforcement of removal. Staff's findings and recommendations are presented under separate submittal ("Amendment to Prior Board Action of August 24, 2001, Agenda Item D-29").

REPORT ON NON-RESIDENTIAL PIERS

At the Board meeting on August 24, 2001, it was noted that one of the applicants on the list for a pier lease (YWCA) was not using the pier for residential purposes. As such, the pier did not qualify for a direct lease pursuant to Act 261, SLH 2000 which was specifically for private residential noncommercial piers. The Board asked staff to follow up on this issue.

Staff's research found that there were three non-residential, noncommercial piers at Kaneohe Bay, including the YWCA, Habilitat, Inc., and Kaneohe Yacht Club. All three are non-profits. The Kaneohe Yacht Club obtained a Conservation District Use Permit (CDUP), a Department of Transportation permit and has been paying under Revocable Permit No. S-5407. Habilitat, Inc. obtained a CDUP but did not obtain a land disposition. According to our records, the YWCA did not obtain any permits or approvals.

To clarify, Section 1 of Act 261, SLH 2000 (see Exhibit E), authorized the Board to directly negotiate leases of State submerged lands for private residential noncommercial piers. Section 3 of the same Act deletes the requirement to obtain prior

October 26, 2001

Governor and Legislature approval for noncommercial piers (with no mention of "residential").

Staff drafted the attached legislation (see Exhibit F) for inclusion in the Administration's package. This amendment to Act 261, SLH 2000, deletes the word "residential" in Section 1 of Act 261, therefore allowing the Board to directly lease submerged lands for private nonresidential noncommercial piers. Upon its enactment, staff could proceed with obtaining Board approval for the three non-residential pier applicants and processing the leases along with the residential piers.

If this legislation is not introduced or not enacted:

- 1) All three applicants would not require a CDUA. Kaneohe Yacht Club and Habilitat applied for and obtained CDUA's, while the YWCA's pier is covered under the master CDUA approved at the Board's meeting of July 13, 2001. The master CDUA did not delineate between residential and non-residential piers.
- 2) Habilitat and the YWCA would need to obtain a land disposition (revocable permit).

Respectfully Submitted,

/s/

DIERDRE S. MAMIYA
Assistant Administrator

APPROVED FOR SUBMITTAL:

/s/

GILBERT S. COLOMA-AGARAN, Chairperson

Department of Land and Natural Resources, Land Division
Kaneohe Bay Public Informational Meeting

Thursday, September 27, 2001; 6:00 p.m.
Kaneohe Community and Senior Center

Agenda

6:00 Introductions; Purpose of Meeting

6:05 History of Kaneohe Bay Amnesty Program

1980's	First attempt by the Department of Land and Natural Resources (Office of Conservation and Environmental Affairs) to address problem of illegal piers in Kaneohe Bay
May 15, 1998	Board approves a plan to address the problem of unauthorized piers in Kaneohe Bay based on concerns raised by current permittees of fairness
June 18, 1998	Conducted public informational meeting to describe Amnesty Program
July 15, 1998	Conducted public informational meeting on Amnesty Program
January 2000	Completed physical inventory of piers
June 20, 2000	Act 261, SLH 2000, signed into law (allows the Board to lease by direct negotiation submerged lands for private residential noncommercial piers, deletes the requirement to post signs on piers to allow for public use and eliminates the requirement to obtain prior approval of Governor and Legislature for the leasing of noncommercial piers)
October 5, 2000	Conducted public informational meeting on Act 261, SLH 2000
November 3, 2000	Sent proposed appraisal methodology information to Rep. Ken Ito, Roy Yanagihara, Alvin Maeda
January 17, 2001	Ad for public hearing published

EXHIBIT A

January 22, 2001	Sent out application forms to all pier owners; described program; notified owners to check website for upcoming Board submittal on appraisal methodology
January 23, 2001	Draft Environmental Assessment published in the Office of Environmental Quality Control (OEQC) bulletin
February 13, 2001	Conducted meeting with several pier owner who were interested in lease rent issue
February 23, 2001	Board approves appraisal methodology for determining the lease rent
February 27, 2001	Public hearing for Conservation District Use Application held at Kaneohe Community & Senior Center
March 15, 2001	Sent out letter to correct statement at public hearing regarding floating or cantilevered piers
May 8, 2001	The Final Environmental Assessment was published in the OEQC bulletin
July 6, 2001	Sent letter to owners who had responded (informed them of process) and to owners who had not responded (informed them of consequences)
July 13, 2001	Board approves master Conservation District Use Application for the proposed Kaneohe Piers Amnesty Program
July 25, 2001	Sent letters to owners in different categories with information on Board meeting results
August 16, 2001	Sent letters to owners who elected to join program informing them of Board meeting on lease disposition
August 24, 2001	Board approves issuance of pier leases
September 27, 2001	Conducted a public informational meeting
October 26, 2001	Return to the Board to report on the public informational meeting <i>Tentative: CHECK OUR K-BAY WEBSITE FOR INFO</i>

6:15 Implementation

- A. Calculation of Lease Rent – Alternatives approved by the Board:
 - Approved methodology - examples
 - Independent appraiser
- B. Calculation of Lease Rent – Rent Credit to Existing Permittees
 - Attorney General opinion
- C. Payment of Lease Rent – Alternatives approved by the Board:
 - One-time
 - Annual payments – includes rental reopenings every 10 years
- D. Review of Flowcharts
- E. Items You Will be Responsible For (pier lease only):
 - Appraisal fee (for those who do not accept approved methodology)
 - Lease rent
 - Document fees (\$55 per lease)
 - Survey cost
 - Tax clearances
 - Liability insurance
 - Performance bond (\$20 per square foot) – acceptable forms: cash, certificate of deposit, savings passbook, surety bond

6:45 Questions & Answers and Comments

- Visit website for Q & A at Kaneohe Bay Piers Amnesty Program website:
<http://www.state.hi.us/dlnr/lmd/lmd.html>
- If no web access, call 587-0433 and secretary will fax information to you
- For specific situations, need to communicate with staff

7:30 Pau

Kaneohe Bay Piers Amnesty Program

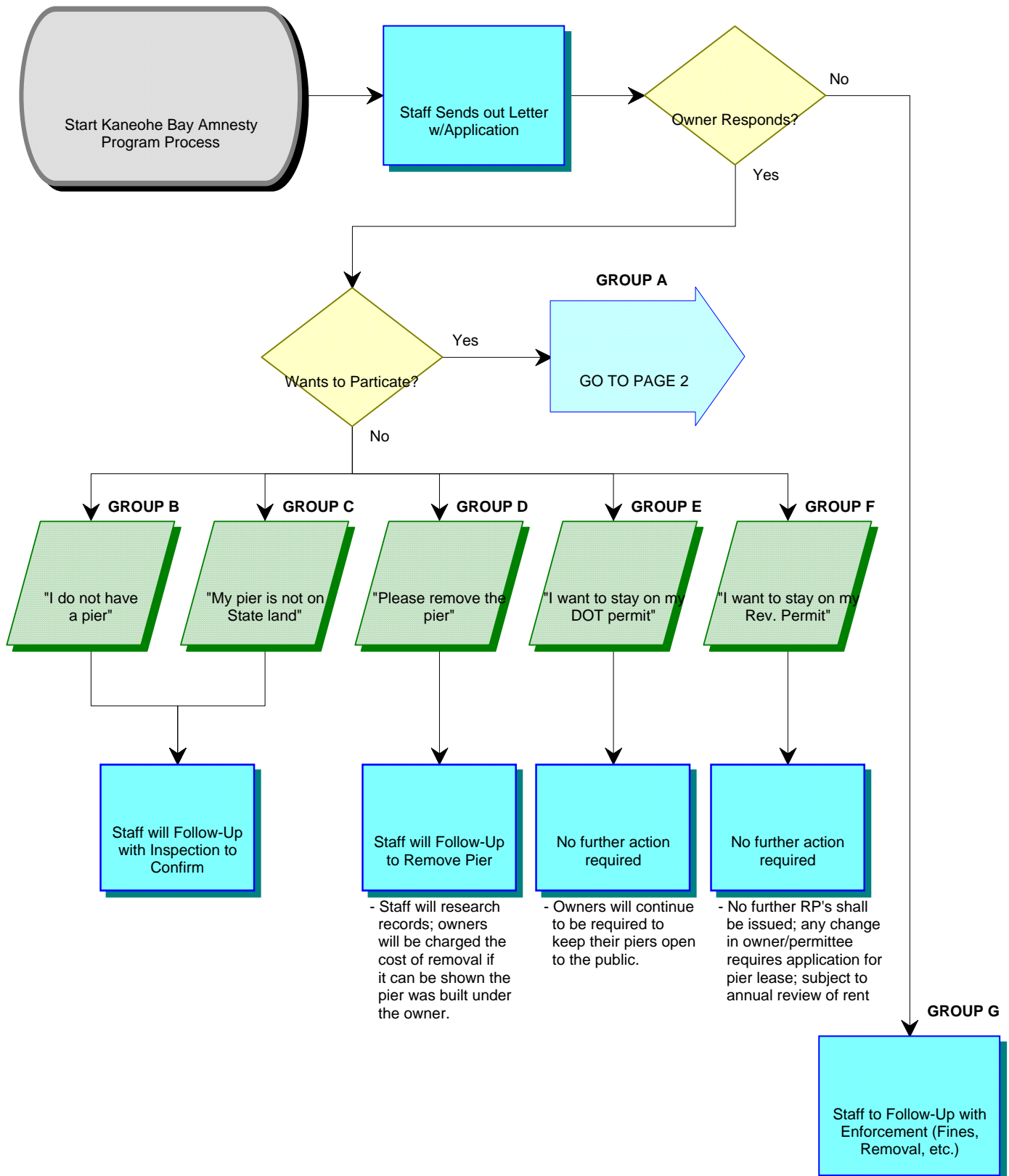
Methodology Approved by the Board of Land and Natural Resources
on February 23, 2001

Example :

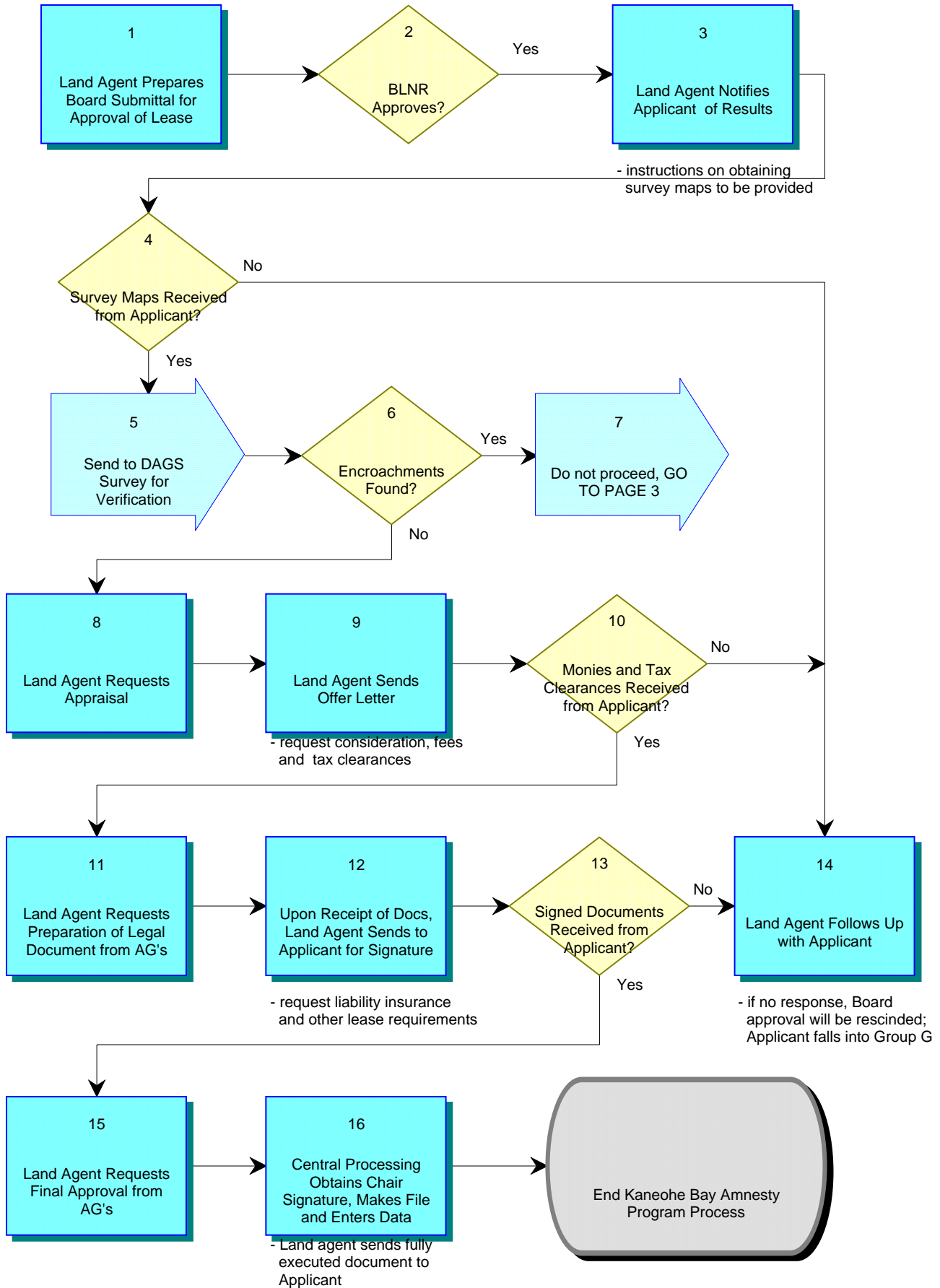
Tax Assessed Land Value (\$/Sq.Ft.)	\$	20.00
x		<u>50%</u>
Submerged Land Value (\$/Sq.Ft.)	\$	10.00
Pier Area (Sq.Ft.)	x	<u>400</u>
Pier Submerged Land Value	\$	4,000.00
Rate of Return	x	<u>4%</u>
Annual Rent	\$	160.00
Present Value Factor	x	<u>22.1086</u>
One Time Payment	\$	3,537.00

Kaneohe Bay Amnesty Program Process

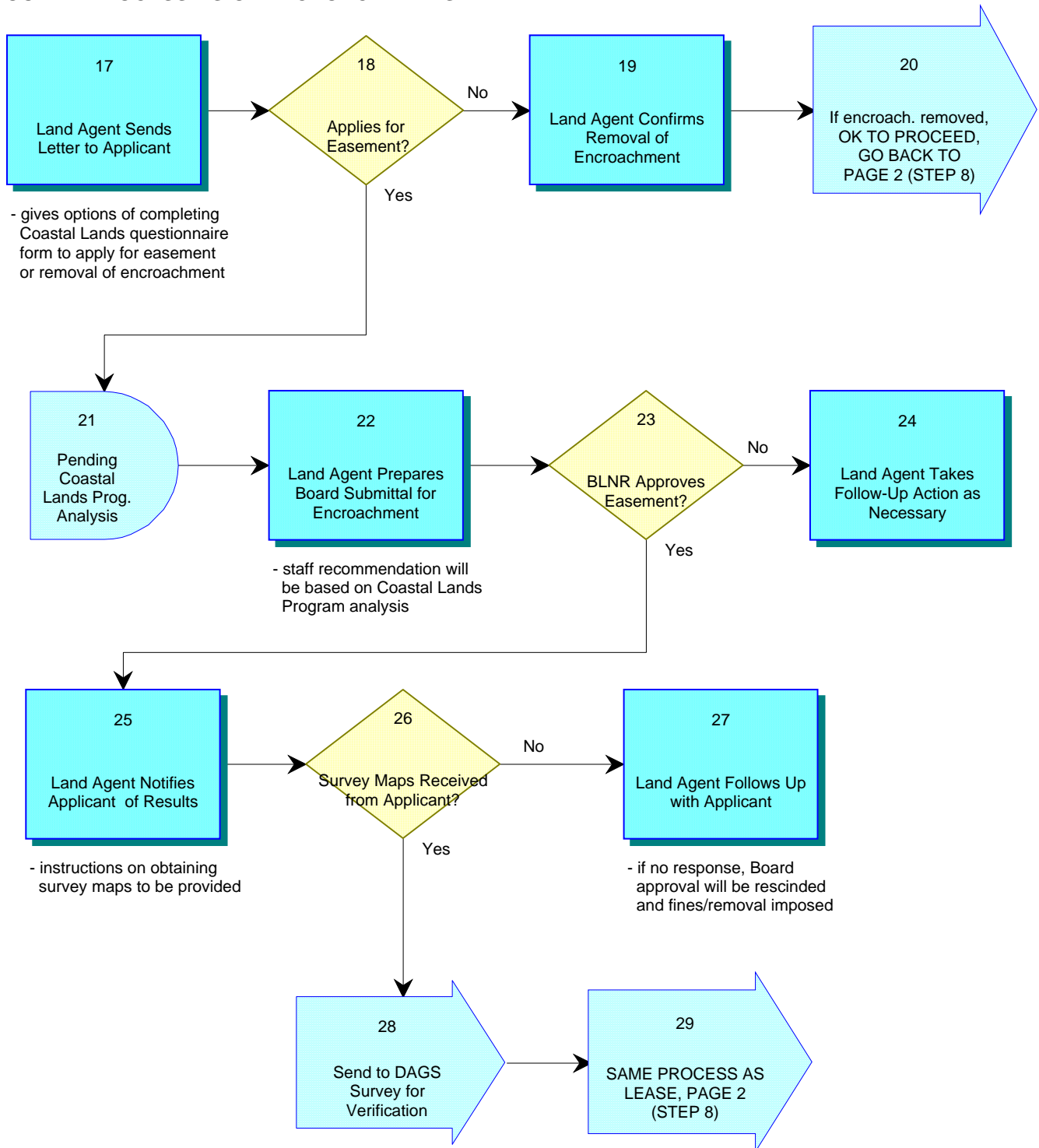
Revision Date: August 13, 2001



GROUP A - PROCESSING OF PIER LEASE:



GROUP A - PROCESSING OF ENCROACHMENTS:



Kaneohe Bay Piers Amnesty Program

Public Informational Meeting
September 27, 2001; 6:00 p.m.

Please put down your concerns in the space below:

You can give this paper to the staff at the meeting or fax to Oahu District
Land Office (808-587-0455).

Name : _____

TMK (if known): _____

Tel : _____

Kaneohe Bay Piers Amnesty Program
Written Public Comments Received

- 1) "Last night I attended the Public Meeting on the subject. I was appalled at the \$20 per square foot bond requirement. No one could explain to anyone's satisfaction just what was the purpose of the bond. In my case, my pier would cost \$5000 plus the bond of \$6000 plus survey plus insurance. Better you come and take this pier down. It has been there for over 40 years and I have maintained it in good condition. It never was officially permitted.

At first, while I didn't think it fair to have to buy my own pier, I did understand that maybe the State had a point. However, now it has become ridiculous!

Then I discovered that my pier would cost me about \$16.00 per square foot, would cost my neighbor about \$32.00 per square foot and my neighbor on the other side about \$10.00 per square foot! This because you have chosen to use outdated valuations.

And further, my dock does not extend down into the water. Anyone who wants, and there are many, may fish and crab under my dock."

- 2) "The law covering this was passed June 20, 2000. It sunsets in 2005. No mention made of amount of money.

The POSO outline talked about agreements to reasonable fees – mine would be \$10,000 – this is not reasonable. The performance bond of \$20 per square foot is ridiculous. The Durham letter outlines fees in other state. Nothing approaches these proposed charges – all are rather nominal and acceptable.

The Corps of Engineers wrote me that I cannot remove the pier adjacent to my property for environmental reasons."

- 3) "Object to bond. Agree to formula."
- 4) "Why bond for those paying for 55 years? Bond is ridiculous – there is no need for a bond – we never needed one the past 26 years. We would want rent we paid since 1975 to be applied to 55 years lease rent. If not, it is not fair to us who paid rent (200+ people did not pay a cent)."
- 5) "
 - Liability insurance
 - Performance bond – outrageous!
 - Pier owners did not have a public hearing regarding the recommendation by staff at the 2/23/01 to charge 50% -- taxation without representation!
 - Deadline unrealistic! July 13, 2002!"
- 6) "No need for performance bond – piers will be kept in good condition. No need for extra insurance of \$500,000/\$300,000. Rent is too high – commercial rent seems 30-50%."

- 7) "Strongly object to having to pay performance bond if paying one-time fee."
- 8) "My wife and I attended the Kaneohe Bay Informational Meeting on Thursday, September 27, 2001 at 6:00 p.m. at the Kaneohe community and senior center concerning the Kaneohe Bay Amnesty Program. We have attended many pier owners meetings since 1998 and several DLNR board meetings.

We want to participate in the program, as long as the fees for the complete lease program remain within reason. The pier has been in existence when my father purchased the property in 1973. He maintained it until he passed away in 1997, and then I inherited the property. What started to be a program where pier owners would not have to pay more than \$5,000 is now gone as high as \$20,000 without factoring in appraisal, survey, insurance and now performance bond costs. The performance bond now changes the whole reasonableness of this program and is totally outrageous.

We now estimate the pier cost to go well over \$45,000 based on what you are now requiring. If this is so we can't afford this lease. In addition to this expense, the city & county is requiring the Kahaluu property owners to convert from our present cesspool to a low pressure sewer system at a cost yet to be determined to the home owners which will be an additional drain to our finances.

It seems that staff has changed hands over the past three years and three months and concerns and recommendations of pier owners were not taken into consideration when staff made the 50% methodology recommendation to the DLNR board. Staff had no written report from other states to compare the cost of this methodology and did not bring it to a public hearing prior to the board passing it. Colleen Meyer's written research regarding other state fees or lease rent charges for use of submerged lands for a residential non-commercial piers seems more accurate and reasonable than what the staff came up with.

July 13, 2001 started the pier owners lease program and the lease requirement are not set and still being changed without our knowledge.

We do thank you for your time and effort in working with the pier owners, and we ask you to present our concerns to the board."

Protect Our Shoreline Ohana

September 27, 2001

DLNR Informational Meeting

We the representatives of Protect Our Shoreline Ohana, a group comprised of shoreline property owners and others who have an interest in the piers issue, wish to recognize the progress that had been made towards resolving this long-standing issue. Both sides have invested a considerable amount of time and effort in working for a fair and reasonable lease which would be acceptable to both the State of Hawaii and the pier owners.

There has been much progress made towards a permanent and reasonable solution since the issue of piers in and around Kaneohe Bay and other locations were brought before the Land Board in 1998. We have seen new enabling legislation (Act 261) enacted by the State to facilitate the processing of leases. In recent months the Land Board has approved the group processing of the Conservation District Use Application (CDUA) for the use of submerged lands and adopted a lease rent formula recommended by the DLNR staff. The DLNR is currently establishing procedures to implement a Special Action Plan for piers in Kaneohe Bay that includes the classification of piers by type of permit issued, surveying and bonding requirements. This position summary is intended to promote dialogue between the Land Board, DLNR and Pier Owners regarding the remaining issues that are being addressed as we move towards the final stages of implementation of this Special Action Plan.

POSITION SUMMARY:

1. We support the following:

- a. The concept of a long-term lease.
- b. We generally support the concept of a one-time payment, provided that the total eventually agreed upon, including all related costs, is reasonable.
- c. The department's offer to accommodate those who may not be able to make a one-time payment and offer to make year installment as a payment option.
- d. The concept of quiet enjoyment that will be provided for in each lease given to pier owners who participate in the program.
- e. The group processing of a CDUA by the DLNR for program participants.
- f. The requirement for shoreline survey, because we understand that it is a requirement of leasing process. Our group intends to meet this requirement by seeking out a surveyor who is able to conduct the required survey at a discount.

2. **We support, but with reservation, the following:**
- a. The adoption of a lease rent formula that uses the C/C Property Assessment of the adjoining property in estimating the value of submerged land. We believe that the adoption of this formula was based upon misstatements of fact made to the Board, and is therefore suspect. In the interests of expediency and in the spirit of compromise, we support the use of this formula, but also recommend that the DLNR make allowances and give credit for the fact that all participants are recreational users and who will bear the entire cost of construction and maintenance of their own respective piers.
3. **We strongly oppose the following:**
- a. The requirement of a performance bond equal to \$20 per square foot. While we understand that a performance bond is a requirement, we believe that the department has the ability to exercise some discretion and can accept payment held in trust in lieu of a performance bond per se.

We recommend that a fixed amount, e.g. \$500, be assessed on each participant in the program and that the entire sum be paid to the State in lieu of the performance bond to be held in an interest bearing trust account for the duration of the pier leases. During the term of the leases, the interest could either be accumulated or paid to the State. Upon the simultaneous expiration of the leases, the entire remaining principal would go to the State.

We believe that this recommendation is a win-win situation for both the State of Hawaii and the Pier Owners!

FOR THE RECORD:

Lease Rent Formula:

While we are not wholly satisfied with the lease rent formula and do not feel comfortable with the manner in which it was adopted, we believe that there is ample room for compromise.

We note the following for the record:

- a. The former Administrator of the Land Division, represented to the Board at the February 23, 2001 Land Board meeting that his department staff had done extensive research on the subject of pier rents in other States and that their recommendation was based on what a majority of the States were doing. Significantly, he did not provide any supporting research documentation at the meeting. The Land Board adopted the recommendation of the DLNR staff and specifically stated that it was basing its decision on the research that the DLNR staff had done. We have asked on numerous occasions for a copy of the research from DLNR and have never been provided with a copy of that research.

Research on this subject, however, was conducted Brian Durham, a legislative analyst (the Legislative Reference Bureau) at the request of Representative Colleen Meyer. The results of this research casts doubt on the representations made by the Administrator at the Land Board meeting on February 23, 2001.

The circumstances strongly suggest that the Administrator misrepresented the facts to the members of the Land Board and that the decision to adopt the recommendation of the DLNR staff was based on the incorrect facts.

The basis for the Land Board's adoption of the DLNR staff proposal is therefore called into question!

- b. The Land Board only took brief notice of the fact that there are substantial differences between piers used for commercial purposes and recreational piers in the State of Hawaii.
 - 1. Significant differences do exist, however. While nearly all commercial piers were built and maintained by the State of Hawaii, all recreational piers were built and maintained by the pier owners.
 - 2. While commercial pier lease rents are deductible the recreational pier rents will have to be fully absorbed by the pier owners.
 - 3. Commercial piers tend to be large structures that have a greater impact on the inshore submerged lands. Recreational piers are smaller and have virtually no noticeable impact on the shoreline.
 - 4. The DLNR justified their methodology for arriving at a value on submerged lands under residential piers by citing examples of commercial leases entered into by the Department of Transportation and the Division of Boating and Ocean Recreation. Those commercial leases used as examples used a formula ranging from a low of 36.5% to a high of 50% of the fast land value. The research conducted by Representative Colleen Meyer shows that throughout the United States, residential piers are treated very differently from commercial piers.

Coastal State Fees For Using Submerged Lands for a Residential Non-Commercial Pier⁽¹⁾

State	Lease, permit or other permission required to use submerged lands? ⁽²⁾	Fee or Rent to Use Submerged Lands?	Amount of Fee or Rent
Alabama	No.	No.	N/A
Alaska	No.	No.	N/A
California	Yes.	Yes.	Free. Applicant pays cost of issuing lease or permit.
Connecticut	Yes.	Yes.	One-time permit fee of \$0.40 per square foot, \$350 minimum.
Delaware	Yes.	Yes.	Unknown
Florida	No.	No.	N/A
Georgia	Yes. Revocable license.	No.	N/A
Louisiana	No. Exempt.	No.	N/A
Maine	Yes.	Yes.	Fair Market Rental Value (annual rent equals 2% of assessed value per square foot for the adjacent upland times the square footage of bottom land). \$100 application fee. \$100 minimum annual rent. \$1200 maximum annual rent.
Maryland	No. Exempt. Notice required.	No.	N/A
Massachusetts	Yes.	Yes.	Simplified license for piers of less than 300 square feet: \$50 application fee. Annual occupancy fee of \$1/yard. 10-year term. Standard license for piers of 300 square feet or more: \$100 application fee. Displacement fee of \$2/cubic yard for material removed. Occupancy fee of \$1/square yard times term of license. 20-year term.
Mississippi	No.	No.	N/A
New Hampshire	Yes.	Yes.	Application fee of \$100 per boat slip.
New Jersey	Yes.	Yes.	Annual rent: \$100 plus fair market rental value.

New York	No. Exempt.	No.	N/A
North Carolina	Yes.	Yes.	Simplified general permit application process for residential piers (2 boat maximum). \$100 application fee.
Oregon	Yes. Registration required.	Yes.	5 year term, one time fee of: (1) \$100 for a dock/float or boat house one thousand (1,000) square feet or less. (2) \$200 for a dock/float or boathouse from one thousand and one (1,001) square feet to two thousand (2,000) square feet in size. (3) Two hundred fifty dollars (\$250) for a dock/float or boathouse from two thousand and one (2,001) square feet to two thousand five hundred (2,500) square feet in size.
Pennsylvania	Yes. General permit by regulation for small docks (750 square feet).	Yes.	Small docks (750 square feet or less) – no fee. Other recreational docks - \$250/yr.
Rhode Island	Yes.	Yes.	Unknown.
South Carolina	Yes.	Yes.	One time permit fee of \$50 for non-commercial projects.
Virginia	Yes	Yes	Permit fee, one-time. \$25 if project cost does not exceed \$10,000. \$100 if project cost exceeds \$10,000.
Texas	Yes. Registration	Yes	One time fee of \$25.
Washington	No.	No.	N/A

Footnotes:

1. Whether permission to use submerged lands is required by a riparian residential landowner to construct a private non-commercial pier, and any lease or permit cost for such use of state-owned submerged lands.
2. Various other permits, authorizations or reviews may be required to construct a pier: environmental, land use, dredge and fill, coastal zone management, etc. Many of these permits require substantial costs or fees. This survey looked only at permission to use submerged lands.

RECEIVED
LAND DIVISION



RECEIVED

HOUSE OF REPRESENTATIVES
2001 OCT -5 P 12: 17
STATE OF HAWAII
STATE CAPITOL
HONOLULU, HAWAII 96813

01 OCT 3 11: 36

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

October 1, 2001

DEPT. OF LAND
& NATURAL RESOURCES
STATE OF HAWAII

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Director
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Re: **Kaneohe Bay Pier Amnesty Program**

Dear Director Coloma-Agaran:

I had the pleasure of attending DLNR's public hearing on the Kaneohe Bay Pier Amnesty Program (the "Pier Program") held at the Kaneohe Senior Center on Thursday, September 27, 2001. I want to commend the DLNR for trying to diligently work through this difficult process that has taken years to consummate. Nevertheless, I still have a few serious concerns regarding the DLNR's Pier Program.

1. **Performance Bond** – The Pier Program's proposed bonding requirement is onerous, unreasonable and unnecessary. I request that the DLNR drop its demand for a performance bond or at least set this demand to a more reasonable \$100 flat fee. Please advise me if legislative action is needed to advance this demand.
2. **Lease Rent Formula** – The Pier Program's proposed formula appears reasonable, but the 50% valuation multiplier is unreasonable. Research indicates that no other state seeks to use a multiplier anywhere as high as the 50% figure selected by DLNR. Instead, a multiplier of 10% appears more in line with the valuation of submerged lands across the United States. I request that the DLNR reconsider its use of the 50% multiplier figure and revise this number down.

*Representative Charles K. Djou
47th District (Kaneohe • Kahaluu)
State Capitol, Room 313
Honolulu, Hawaii 96813*

*Phone: (808) 586-6490 • Fax: (808) 586-6491
Email: repdjou@capitol.hawaii.gov • Web: www.capitol.hawaii.gov*

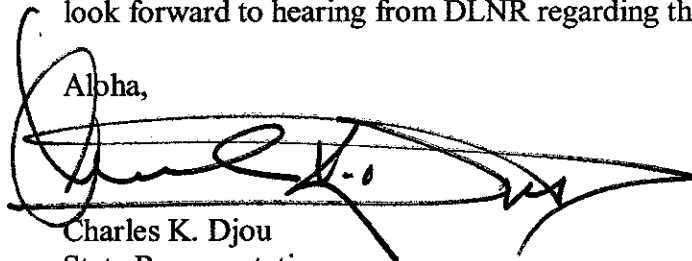
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Rep. Charles K. Djou

Please do not hesitate to contact me if you have any questions or comments. I look forward to hearing from DLNR regarding the Pier Program soon. Thank you.

Alpha,

A handwritten signature in black ink, appearing to be "Charles K. Djou", written over a horizontal line. The signature is stylized with a large loop at the beginning and a long, sweeping tail.

Charles K. Djou
State Representative
47th District (Kaneohe to Kahaluu)

cc: Sen. Bob Hogue
Sen. Bob Nakata
Rep. Colleen Meyer
Rep. Ken Ito

A BILL FOR AN ACT

RELATING TO NONCOMMERCIAL PIERS:

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 171, Hawaii Revised Statutes, is amended
2 by adding a new section to be appropriately designated and to
3 read as follows:

4 "§171- Private residential noncommercial piers.

5 Notwithstanding any limitations to the contrary, the board of
6 land and natural resources may lease, by direct negotiation and
7 without recourse to public auction, state submerged lands or
8 lands beneath tidal waters for private residential noncommercial
9 piers on such terms and conditions as may be prescribed by the
10 board."

11 SECTION 2. Section 171-36, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) Except as otherwise provided[,] by law, the following
14 restrictions shall apply to all leases:

- 15 (1) Options for renewal of terms are prohibited;
- 16 (2) No lease shall be for a longer term than sixty-five
- 17 years, except in the case of a residential leasehold
- 18 which may provide for an initial term of fifty-five
- 19 years with the privilege of extension to meet the

1 requirements of the Federal Housing Administration,
2 Federal National Mortgage Association, Federal Land
3 Bank of Berkeley, Federal Intermediate Credit Bank of
4 Berkeley, Berkeley Bank for Cooperatives, or Veterans
5 Administration [requirements]; provided that the
6 aggregate of the initial term and extension shall in no
7 event exceed seventy-five years;

8 (3) No lease shall be made for any land under a lease which
9 has more than two years to run;

10 (4) No lease shall be made to any person who is in arrears
11 in the payment of taxes, rents, or other obligations
12 owing the State or any county;

13 (5) No lease shall be transferable or assignable, except by
14 devise, bequest, or intestate succession; provided that
15 with the approval of the board of land and natural
16 resources, the assignment and transfer of a lease or
17 unit thereof may be made in accordance with current
18 industry standards, as determined by the board;
19 provided further that prior to the approval of any
20 assignment of lease, the board shall have the right to
21 review and approve the consideration to be paid by the
22 assignee and may condition its consent to the
23 assignment of the lease on payment by the lessee of a

1 premium based on the amount by which the consideration
2 for the assignment, whether by cash, credit, or
3 otherwise, exceeds the depreciated cost of improvements
4 and trade fixtures being transferred to the assignee;
5 provided further that with respect to state
6 agricultural leases, in the event of foreclosure or
7 sale, the premium, if any, shall be assessed only after
8 the encumbrances of record and any other advances made
9 by the holder of a security interest are paid;

- 10 (6) The lessee shall not sublet the whole or any part of
11 the demised premises except with the approval of the
12 board; provided that prior to the approval, the board
13 shall have the right to review and approve the rent to
14 be charged to the sublessee; provided further that in
15 the case where the lessee is required to pay rent based
16 on a percentage of its gross receipts, the receipts of
17 the sublessee shall be included as part of the lessee's
18 gross receipts; provided further that the board shall
19 have the right to review and, if necessary, revise the
20 rent of the demised premises based upon the rental rate
21 charged to the sublessee including the percentage rent,
22 if applicable, and provided that the rent may not be
23 revised downward;

1 (7) The lease shall be for a specific use or uses and shall
2 not include waste lands, unless it is impractical to
3 provide otherwise; and

4 (8) Mineral and metallic rights and surface and ground
5 water shall be reserved to the State[; and

6 (9) No lease of public lands, including submerged lands,
7 nor any extension of any such lease, shall be issued by
8 the State to any person to construct, use, or maintain
9 a sunbathing or swimming pier or to use the lands for
10 such purposes, unless such lease, or any extension
11 thereof, contains provisions permitting the general
12 public to use the pier facilities on the public lands
13 and requiring that a sign or signs be placed on the
14 pier, clearly visible to the public, which indicates
15 the public's right to the use of the pier. The board,
16 at the earliest practicable date, and where legally
17 possible, shall cause all existing leases to be amended
18 to conform to this paragraph. The term "lease", for
19 the purposes of this paragraph, includes month-to-month
20 rental agreements and similar tenancies]."

21 SECTION 3. Section 171-53, Hawaii Revised Statutes, is
22 amended by amending subsection (c) to read as follows:

23 "(c) The board, with the prior approval of the governor and

1 the prior authorization of the legislature by concurrent
2 resolution, may lease state submerged lands and lands beneath
3 tidal waters under the terms, conditions, and restrictions
4 provided in this chapter; provided that the authorization of the
5 legislature shall not be required for leases issued under chapter
6 190D; and provided further that the approval of the governor and
7 authorization of the legislature shall not be required for any
8 grant of easement or lease of state submerged lands or lands
9 beneath tidal waters used for moorings, cables, [or]
10 pipelines[;], or noncommercial piers; provided further that this
11 exemption shall not apply to easements for cables used for
12 interisland electrical transmission or slurry pipelines used for
13 transportive materials, mined at sea, or waste products from the
14 processing of the same.

15 The lease shall provide that the lands shall be reclaimed at
16 the expense of the lessee. Title to the reclaimed lands shall
17 remain in the State."

18 SECTION 4. Statutory material to be repealed is bracketed.
19 New statutory material is underscored.

20 SECTION 5. This Act shall take effect upon its approval;
21 provided that the authority granted to the department of land and
22 natural resources to enter into lease agreements with owners of
23 private residential noncommercial piers shall be repealed on June

1 30, 2005, and the amendments made by sections 1, 2, and 3 of this
2 Act to the Hawaii Revised Statutes, shall be repealed as of that
3 date and sections 171-36(a) and 171-53(c), Hawaii Revised
4 Statutes, shall be reenacted in the form in which they read on
5 the day prior to the effective date of this Act; provided further
6 that any lease agreement executed pursuant to this Act prior to
7 June 30, 2005, or any lease extension executed thereon after the
8 repeal of this Act, shall remain exempt from section 171-
9 36(a)(9), Hawaii Revised Statutes, after the repeal of this Act.

APPROVED BY THE
GOVERNOR ON

JUN 20 2000

DRAFT

____.B. NO.____

A BILL FOR AN ACT

RELATING TO NONCOMMERCIAL PIERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Act 261, Session Laws of Hawaii 2000, is
2 amended by amending section 1 to read as follows:

3 "SECTION 1. Chapter 171, Hawaii Revised Statutes, is
4 amended by adding a new section to be appropriately designated
5 and to read as follows:

6 "**§171- Private [~~residential~~] noncommercial piers.**

7 Notwithstanding any limitations to the contrary, the board of
8 land and natural resources may lease, by direct negotiation and
9 without recourse to public auction, state submerged lands or
10 lands beneath tidal waters for private [~~residential~~]
11 noncommercial piers on such terms and conditions as may be
12 prescribed by the board.""

13 SECTION 2. Act 261, Session Laws of Hawaii 2000, is
14 amended by amending section 5 to read as follows:

15 "SECTION 5. This Act shall take effect upon its approval;
16 provided that the authority granted to the department of land
17 and natural resources to enter into lease agreements with owners
18 of private [~~residential~~] noncommercial piers shall be repealed

EXHIBIT F

DRAFT**____.B. NO. ____**

1 on June 30, 2005, and the amendments made by sections 1, 2, and
2 3 of this Act to the Hawaii Revised Statutes, shall be repealed
3 as of that date and sections 171-36(a) and 171-53(c), Hawaii
4 Revised Statutes, shall be reenacted in the form in which they
5 read on the day prior to the effective date of this Act;
6 provided further that any lease agreement executed pursuant to
7 this Act prior to June 30, 2005, or any lease extension executed
8 thereon after the repeal of this Act, shall remain exempt from
9 section 171-36(a)(9), Hawaii Revised Statutes, after the repeal
10 of this Act."

11 SECTION 3. Statutory material to be repealed is bracketed
12 and stricken.

13 SECTION 4. This Act shall take effect upon its approval.

14

15 INTRODUCED BY: _____

16